IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.31626 of 1998

Dated: 12-06-2007

Between:

Soni Bai, w/o Haria and d/o late Laxman Chauhan.

... Petitioner

and

1. Government of Andhra Pradesh,
   rep. by its Secretary,
   Revenue Department,
   Secretariat Buildings,
   Hyderabad and 5 others.

... Respondents

ORDER:

Petitioner states that her father late Laxman Chauhan and his predecessors-in-interest were the owners of an extent of Acs.10-00 of land in S.No.126 situated at Borabanda, Hyderabad. She further states that when there was threat by some private individual, her father filed O.S.3457 of 1983 before the Court of the VIII Assistant Judge, City

Civil Court, Hyderabad, seeking perpetual injunction against them and their men etc., from interfering with his peaceful possession and enjoyment of the land in question and the said suit was decreed in his favour on

13-08-1987 and the judgment has become final. Thereafter, when there was threat from the Government, her father filed O.S.No.2310 of 1985 on the file of the Court of the IV Assistant Judge, City Civil Court, Hyderabad against respondents herein, seeking perpetual injunction, and the said suit after contest by the Government, was ultimately decreed on 28-10-1991 in favour of her father declaring that her father is having absolute title and possession over the said land. Against the said judgment, Government preferred appeal in A.S.No.205 of 1993 on the file of the Court of the Additional Chief Judge, Civil Court, Hyderabad and the said appeal was dismissed on 24-02-1995. Thus, the said judgment has become final.

2. It is the case of petitioner that the land in question is inherited by her, from her late father and her grievance is that respondents are again trying to interfere with her peaceful possession and enjoyment of the lands in question. Hence, she approached this Court and filed the present writ petition seeking a direction to respondents not to interfere with her peaceful possession and enjoyment over the land in question.

3. Heard learned counsel for the parties.

4. Having heard learned counsel for petitioner; this Court is of the view that the writ petition is misconceived. When once a competent Civil Court has declared that petitioner's father is having title and possession over the land in question and respondents are directed not to interfere with his possession over the said land, it is not known as to how the petitioner approached this Court and invoked the jurisdiction

under Article 226 of the Constitution of India. It is only by way of filing an execution petition, petitioner can get the said decree passed by the competent Civil Court executed. It must be remembered that it is not an Executing Court;

this Court in exercise of the powers under Article 226 of the Constitution of India can interfere only by way of judicial review but not by way of execution. For that reason, this Court is not inclined to grant the relief sought for.

5. Leaned counsel for petitioner also contended that petitioner shall not be dispossessed from out of the lands in question without following due process under law. As the same is disputed by the learned Government Pleader and brought to my notice the averments made in the counter affidavit, wherein it is stated that petitioner was never in possession of the land in question and in fact, the land in question is part and parcel of parcel of the Government land and is now under physical possession of MLAs colony and MLAs have constructed their houses over the land in question, and as such the relief sought in this writ petition cannot be granted. Having regard to these circumstances, this Court is of the view that there are no merits in the writ petition.

6. Accordingly, the writ petition is dismissed. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.12-06-2007
GLV